



## BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

### Supervisory Review Re: Chicken Operating Agreement Amendments

### FINAL RESPONSE SUBMISSIONS OF CHICKEN FARMERS OF CANADA

May 11, 2016

#### Response to Submission of PPPABC dated April 27, 2016

1. The time has come for the FIRB to bring this supervisory review to a close, and to approve the proposed Operating Agreement amendments. The FIRB has all the information required to show that the amendments reflect sound marketing policy and advance the interests of the chicken industry in British Columbia and Canada generally. In contrast, the alternative put forward by the PPPABC lacks support in the chicken industry, is not based on reliable, accurate information, and, in the absence of broad stakeholder support, would put the orderly marketing system for chicken at risk.

2. PPPABC does not dispute that British Columbia receives and will continue to receive a domestic allocation greater than its share of Canada's population.<sup>1</sup> PPPABC similarly does not dispute that British Columbia receives a significantly greater share of specialty production and market development production than its share of Canada's population.<sup>2</sup>

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<sup>1</sup> CFC Submission, March 18, 2016, para. 63; BC Board Submission, March 31, 2016, para. 31.

<sup>2</sup> *Ibid.*

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3. Moreover, PPPABC's core objection, based on the alleged "supply imbalance" caused by higher levels of chicken and fowl imports in Central Canada compared to Western Canada,<sup>3</sup> has not been substantiated and cannot be supported by a proper SAFETI analysis. To illustrate:

- a) The problems with PPPABC's "supply imbalance" hypothesis begin with the fact that chicken TRQ imports and spent fowl imports are outside the scope of CFC's jurisdiction and outside the scope of the Federal-Provincial Agreement.<sup>4</sup> More fundamentally, however, neither CFC nor the provincial boards have reliable and meaningful information about the flow of TRQ and fowl imports into different provinces or regions.<sup>5</sup> In order to be reflective of sound marketing policy, an allocation system must be founded on solid information, not perceptions.
- b) Ironically, PPPABC members and further processors would presumably have more data on this subject than CFC or the provincial commodity boards. However, PPPABC has chosen not to disclose any such information, apart from snippets related to third-party product purchased by Sunrise and Hallmark Group.<sup>6</sup> These information snippets, if anything, suggest that Sunrise and Hallmark Group have access to significant volumes of product from outside of British Columbia.
- c) To the extent British Columbia processors import less product than Central Canadian processors, the evidence suggests this is caused by the business decisions of those processors based on distance and shipping costs.<sup>7</sup> Thus, apart

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<sup>3</sup> PPPABC Submission, April 27, 2016, para. 42: "The MOU and proposed amendments to the Operating Agreement do not address the fundamental concerns of the processors, namely that the West is experiencing a significant supply imbalance which is affecting the processors' ability to maintain and grow their markets."

<sup>4</sup> CFC Submission, March 18, 2016, paras. 53-56.

<sup>5</sup> CFC Submission, April 27, 2016, paras. 8-27.

<sup>6</sup> Affidavit of Ron Kilmury, sworn April 28, 2016, para. 8. The source of this information is somewhat unusual given that employees associated with Sunrise and the Hallmark group (Scott Cummings and Blair Shier) also provided affidavits in this review.

<sup>7</sup> Blair Shier states in his affidavit, sworn April 28, 2016: "While a Western further processor could theoretically purchase TRQ and use it in its Western operations, it is not practical to do so because it is extremely complex, risky, and unsustainable due to distances and shipping timelines. It is also far easier and less expensive to have

from the lack of accurate, reliable data, there is another problem. From a sound marketing policy perspective, the domestic allocation system should not supply processors in a province with additional domestic production to make up for differences in distance and shipping costs. To do so would be the antithesis of the principles of comparative advantage and of promoting efficiency and competitiveness, as intended by the orderly marketing system.<sup>8</sup>

- d) It would also be inappropriate to base domestic allocations on the assumption that current volumes of illegal chicken and spent fowl imports will continue. CFC continues to work on reducing fraud related to these imports, and has had recent success in obtaining government commitments to respond to these issues.<sup>9</sup> PPPABC members, including further processors owned by British Columbia processors, should work on solutions to stop fraudulent imports of chicken and spent fowl, not simply complain from the sidelines or seek redress from CFC.

4. PPPABC's submission and affidavits place particular emphasis on British Columbia's further processing industry.<sup>10</sup> From CFC's perspective, PPPABC's efforts would be better placed engaging with CFC with respect to the refinement of the further processing component and its market development program,<sup>11</sup> rather than a sweeping challenge to the proposed Operating Agreement.

5. PPPABC's submission continues to focus on comparing market share between provinces and regions, rather than on solutions that grow the overall chicken industry in British Columbia and Canada. For example, PPPABC does not dispute CFC's analysis that, between A-127 and A-

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U.S.-based product simply shipped to our Ontario facility and produce the product at our Waterloo plant, as the materials are almost always sourced from the Southeastern United States."

<sup>8</sup> See sections 21 and 23(2) of the *Farm Products Agencies Act*.

<sup>9</sup> News Release, "Government of Canada Delivers New Programs for Supply Management Sector", October 5, 2015, Ottawa, Ontario, Agriculture and Agri-Food Canada, CFC Supplementary Documents, Tab 7.

<sup>10</sup> See e.g., PPPABC submission, April 27, 2016, para. 4. "The continued existence of the BC further processing industry is at risk, and the industry is no longer able to grow. Investment in further processing is moving to Ontario."

<sup>11</sup> As suggested previously, see CFC Submission, April 27, 2016, paras. 53, 54.

138, Western provinces received, on average, more production than requested by Western processors.<sup>12</sup> Rather, PPPABC argues that any increases also benefit Central Canada, and in larger volumes because of Central Canada's relative size.<sup>13</sup> Once again, this line of argument is flawed. The FIRB's SAFETI analysis should focus on whether the proposed Operating Agreement serves the needs of the entire British Columbia market and foster long-term growth of the industry, not on a zero-sum comparison between provinces or regions.

6. PPPABC's submission equates the proposed Operating Agreement to pro-rata allocations.<sup>14</sup> This ignores the intent and effect of the methodology of the proposed Operating Agreement to generate differential growth. The results of the methodology's components can vary based on changing economic and underlying circumstances. Indeed, the methodology has already generated differential growth. Since A-127, the regions with the greatest population and economic growth - Western and Central Canada - have received allocations significantly above pro-rata, with Western Canada receiving 906,983 kg (eviscerated) more production than under a pro-rata approach.<sup>15</sup>

7. PPPABC also continues to object to the process leading up to the proposed Operating Agreement.<sup>16</sup> However, the record in this supervisory review confirms that British Columbia processors had the opportunity to express their concerns and did so, on multiple occasions.<sup>17</sup> The main objection of PPPABC appears to be not that they lacked the opportunity to voice their concerns, but that the proposed Operating Agreement does not incorporate all of their preferences.<sup>18</sup>

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<sup>12</sup> CFC Submission, March 18, para 61.

<sup>13</sup> PPPABC Submission, April 27, 2016, para. 50; PPPABC Submission, April 4, 2017, para. 88.

<sup>14</sup> PPPABC Submission, April 27, 2016, para. 23: "The proposed amendments will effectively lock in the current shares of the domestic allocation with no ability to obtain a differentiated result in the future."

<sup>15</sup> Alberta Chicken Producers Submission, March 18, 2016, page 4.

<sup>16</sup> PPPABC Submission, April 27, 2016, paras. 39-45.

<sup>17</sup> See e.g. Minutes, Pricing and Production Advisory Committee, November 14, 2013, BC Board Submission, March 31, 2016, Tab 6; Minutes, Pricing and Production Advisory Committee, April 16, 2014, BC Board Submission, March 31, 2016, Tab 7.

<sup>18</sup> See e.g. PPPABC Submission, April 27, 2016, paras. 40-42.

8. This raises another problem. PPPABC cannot, as it appears to be doing, insist on the right to veto changes to the Operating Agreement. That is not how the orderly marketing system is designed to operate. The industry interests represented by PPPABC are important, and must be duly considered, but PPPABC is not a regulator, and is not a signatory to the FPA.

9. PPPABC continues to suggest that the current Operating Agreement mandates differentiated regional growth through the mechanism of regional ranges.<sup>19</sup> As CFC has explained, the regional ranges in the existing Operating Agreement only serve to limit the ability of provinces to make allocation requests. They do not entitle provinces to receive a given allocation. PPPABC continues to misconstrue how the regional range concept works under the current Operating Agreement.

10. Finally, PPPABC's submission demonstrates the absence of a broadly-supported and well-developed alternative to the proposed Operating Agreement. The evidence of Ron Kilmury confirms that British Columbia processors did not pursue the DRA proposal after the September 2015 CFC meeting, because of "reports that the majority of other provinces did not have an appetite to renegotiate the MOU".<sup>20</sup> There is no evidence in this supervisory review of any change in this appetite since September 2015.

11. Similarly, PPPABC's submission and evidence underline the lack of diligence by processors in advancing the DRA proposal and engaging with CFC in general regarding their concerns. CFC's agenda for its September 2, 2015 meeting reserved 90 minutes to discuss "Operating Agreement amendments", including the further processing component.<sup>21</sup> Notwithstanding this agenda item, Jeff MacDowell did not take steps to have somebody attend the CFC meeting in his place, an option he acknowledges in his affidavit.

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<sup>19</sup> PPPABC Submission, April 27, 2016, para. 49.

<sup>20</sup> Affidavit of Ron Kilmury, sworn April 28, 2016, para. 16.

<sup>21</sup> Affidavit of Jeff MacDowell, sworn April 28, 2016, Exhibit "A".

## Conclusion

12. CFC asks FIRB to sign the proposed Operating Agreement and to authorize the BC Board to do so as well. The proposed Operating Agreement advances the interests of British Columbia and sound marketing policy for the following main reasons:

- a) The proposed Operating Agreement achieves differential growth across provinces.
- b) Through differential growth, the proposed Operating Agreement allows for greater overall growth in the market. Although PPPABC points to two market indicators that may indicate lower growth in the future, it does not dispute that since A-127, all provinces, including British Columbia, have grown a minimum of 5.6%.<sup>22</sup>
- c) The proposed Operating Agreement enables Alberta to re-enter the FPA, facilitating the FPA's objective of orderly marketing.

13. Rejecting the proposed Operating Agreement presents serious risks to the British Columbia and Canadian chicken industries. In particular, it puts the consensus achieved in the MOU at risk. This is likely to lead to serious consequences, including the following consequences in particular:

- a) Negotiations on the issue of differential growth issue would again consume significant time, money, and resources of the industry, resources that could be better spent addressing the many challenges and opportunities currently facing the industry.
- b) CFC may have difficulty setting national allocations, and FPCC may refuse to approve national allocations.

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<sup>22</sup> CFC Submission, March 18, 2016, para. 43.

- c) Alberta may remain outside of the system, and other provinces may follow, jeopardizing the continued operation of the system.

14. The PPPABC's preoccupation with TRQ and spent fowl imports do not justify subjecting the British Columbia and Canadian chicken industries to the above risks. The appropriate and proportional response to PPPABC's concerns is for PPPABC, the BC Board, and FIRB to work with CFC and other stakeholders on issues where mutually beneficial solutions are possible. CFC identified many opportunities for such engagement in its submission on April 27, 2016.<sup>23</sup> Meanwhile, in order to allow the industry to move forward, FIRB should sign the proposed Operating Agreement. From CFC's perspective, the record in this supervisory review is more than sufficient for FIRB to conclude that the proposed Operating Agreement represents a strategic, accountable, fair, effective, transparent, and inclusive solution for the British Columbia chicken industry.

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<sup>23</sup> CFC Submission, April 27, 2016, paras. 51-56.